

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Complaint of SWKI-Seward)
West Central, Inc. and SWKI-Stevens Southeast,) Docket No. 14-ANGG-119-COM
Inc. Against Anadarko Natural Gas Company.)

**LIST OF THRESHOLD LEGAL ISSUES AND
PROPOSED INITIAL PROCEDURAL SCHEDULE**

Anadarko Natural Gas Company (“ANGC”), pursuant to the Prehearing Officer’s request during the January 6, 2014 Scheduling Conference, hereby files its List of Threshold Legal Issues and Proposed Initial Procedural Schedule. In order to efficiently proceed in this Docket, ANGC respectfully requests that the State Corporation Commission of the State of Kansas (“KCC” or “Commission”) issue an Order approving the Initial Procedural Schedule, as set forth below, and the submission of briefs addressing the below List of Threshold Legal Issues.

The parties were unable to reach an agreement on a joint list of issues as suggested by the Prehearing Officer. (*See* attached). As a result, ANGC and the Complainant, SWKI-Stevens Southeast, Inc. and SWKI-Seward West Central, Inc. (collectively, the “NPU’s”), will submit separate lists for Commission consideration.

ANGC respectfully requests the Commission order the parties to address all of the legal issues set forth below. Briefs on the threshold issues below will fully address the numerous and complex legal questions to be determined by the Commission in this Docket.

I. LIST OF THRESHOLD LEGAL ISSUES

ISSUE 1: Does the Commission have jurisdiction to determine the merits of the NPU’s Complaints against either or both AESC or ANGC; or must the NPU’s Complaints be dismissed, in whole or in part, due to a lack of KCC jurisdiction?

- a. The SWKI-SE Gas Sales Agreement dated July 1, 1998:

- (i) On what basis, if any, does the KCC have jurisdiction over AESC?
 - (ii) On what basis, if any, does the KCC have jurisdiction over the AESC/SWKI-SE Gas Sales Agreement?
 - (iii) On what basis, if any, does Kansas law provide for a private right of action by SWKI-SE against AESC?
- b. The SWKI-SWC Gas Sales Agreement dated June 1, 2002:
- (i) On what basis, if any, does the KCC have jurisdiction over ANGC?
 - (ii) On what basis, if any, does the KCC have jurisdiction over the ANGC/SWKI-SWC Gas Sales Agreement dated July 1, 2002?
 - (iii) On what basis, if any, does Kansas law provide for a private right of action by SWKI-SWC against ANGC?
- c. If the KCC determines that it does have jurisdiction under Kansas law to hear and determine a private right of action with regard to either or both the 1998 SWKI-SE Gas Sales Agreement or the 2002 SWKI-SWC Gas Sales Agreement, is the Commission bound by the terms of the Agreements to order that “[a]ny dispute arising out of or relating to [the] Agreement or the breach, termination, or validity thereof” be finally resolved through binding arbitration in Houston, Texas?
- (i) If the KCC is not required to order arbitration of the dispute, may it still do so under Kansas law and the KCC authority to supervise public utilities?

ISSUE 2: If the Commission determines that it has jurisdiction to hear one or both of the Complaints filed by the NPUs, according to the terms of the 1998 and 2002 Gas Sales Agreements, may the Commission only consider AESC and ANGC compliance during the most recent two years?

ISSUE 3: What is required with regard to each of the Agreements by the Limited Certificate issued to ANGC in Docket No. 00-ANGG-218-COC?

- a. Were the individual NPU gas sales agreements required to be filed with the Commission?
- b. If the individual NPU gas sales agreements were required to be filed with the Commission, and were not, do the NPUs have a private right of action?

ISSUE 4: May the Commission order damages or a refund, as claimed by the NPUs?

- a. Which party has the burden of proof?

- b. What effect should the full performance of ANGC, AESC, and the NPUs under each gas sales agreement have on the damages requested by the NPUs?
- c. In what manner, if any, do the principles of *quantum meruit* and due process of law apply to the delivery of natural gas pursuant to the 1998 and 2002 Agreements?
- d. If, under Kansas law, the Commission may order a refund, is it required to do so?
- e. Does Kansas law permit the Commission to retroactively modify or amend private contract terms between parties absent a Commission finding that the terms are contrary to the public interest?

II. PROPOSED INITIAL PROCEDURAL SCHEDULE

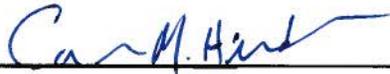
The parties discussed an Initial Procedural Schedule during their January 6, 2014 Scheduling Conference. Following those discussions, ANGC submits the following Proposed Initial Procedural Schedule for Commission approval:

• List of Threshold Legal Issues	January 21, 2014
• Simultaneous Briefs on Threshold Legal Issues	February 19, 2014
• Simultaneous Reply Briefs on Threshold Legal Issues	March 6, 2014
• Procedural Conference	April 7, 2014

WHEREFORE, ANGC respectfully requests the Commission issue an Order approving the Proposed Initial Procedural Schedule and accepting the above List of Threshold Legal Issues for briefing.

Respectfully submitted,

SMITHYMAN & ZAKOURA, CHARTERED

By: _____

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GAS COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been faxed, hand-delivered, emailed, and/or mailed, First Class, postage prepaid, this January 21, 2014, to:

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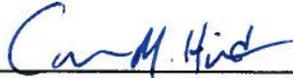
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Carson M. Hinderks

Carson Hinderks

From: James Zakoura
Sent: Tuesday, January 21, 2014 3:56 PM
To: Frank Caro; Anne Callenbach; 'Montgomery Escue' (montgomery.escue@agenergy.com); Kirk Heger (ag1stkh@pld.com); jhitch@hitchok.com
Cc: Sam Feather; Amber Smith; Carson Hinderks
Subject: FW: Joint List of Threshold Issues and Initial Procedural Schedule
Attachments: # 46808217 v 3 (Joint List of Threshold Issues and Initial Procedural Schedule 1-16-14).DOCX-c.docx

Frank –

Thank you for your email, below.

We forwarded our Draft Threshold Legal Issues list to you, for consideration by you and your Clients, at 3:38 PM on Thursday, January 16, 2014. We received no response from you to our suggested, draft language Issues List, until receipt of your email and attachment, below.

Your response to us, was received at 3:19 PM today, less than two hours before the filing at the KCC must be made – and five days after our Draft was served on you. Our Client resides out of the area, and insufficient time exists for us at this late time, to pursue this matter further.

In addition, my initial review of your proposed draft Issues List, is not one that we could in any manner endorse, or with which we could agree.

In view of this situation as described herein, we will be filing on behalf of Anadarko, our Issues List separately from your Client, and the Commission will thereafter determine the manner in which the threshold legal issues will proceed for consideration.

Very truly yours.

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From: Frank Caro [<mailto:FCaro@Polsinelli.com>]

Sent: Tuesday, January 21, 2014 3:19 PM

To: James Zakoura; Carson Hinderks; Sam Feather (s.feather@kcc.ks.gov)

Cc: Anne Callenbach; 'Montgomery Escue' (montgomery.escue@agenergy.com); Kirk Heger (ag1stkh@pld.com); jhitch@hitchok.com

Subject: Joint List of Threshold Issues and Initial Procedural Schedule

Jim, Sam and Carson:

Attached are the list of issues, we have changed from what you have submitted. We believe it is incumbent on us to try to keep these issues concise and relevant for the Commission's consideration. We were completely surprised by the Draft Settlement and Agreement filed last Wednesday, especially since our clients were not consulted nor were we a part of those negotiations and settlement.

Let us know if you can agree to these issues.

Frank

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Carson Hinderks

From: Carson Hinderks
Sent: Thursday, January 16, 2014 3:38 PM
To: 'Frank Caro'; 'Anne Callenbach'
Cc: 'Sam Feather'; 'Amber Smith'; James Zakoura
Subject: 14-119 - Joint List of Issues and Initial Procedural Schedule
Attachments: Joint List of Threshold Issues and Initial Procedural Schedule 1-16-14.docx

Frank and Anne,

As promised, I have attached a list of threshold legal issues that we propose the parties address in briefs. We have also included a proposed "initial procedural schedule" that should be consistent with our scheduling call last week.

The list and proposed schedule is currently drafted as a joint filing. We are certainly willing to incorporate any additional issues, or submit separate filings, as you see fit.

If you have any questions, please feel free to contact Jim or me at any time.

Thanks,

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